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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-263
	)	
Consumer Protection and Customer Service	)	

COMMENTS OF
COLE, RAYWID & BRAVERMAN

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On behalf of the cable operators and associations listed on the signature page.

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The law firm of Cole, Raywid & Braverman ("CR&B"), hereby submits its comments on the Commission's December 11, 1992 Notice of Proposed Rulemaking, FCC 92-541 ("NPRM") in this proceeding. CR&B files these comments as the attorney for those cable television operators, listed below, who serve over 3.3 million cable subscribers (representing approximately 6% of the U.S. total), and those state and regional cable television associations, also listed below, whose members serve approximately 9.5 million subscribers (approximately 17% of U.S. total).

SUMMARY OF COMMENTS

The 1992 Cable Act requires that the FCC adopt customer service standards that are flexible to account for the differences in size, geography, and economies of cable systems. The statute requires that the FCC standards be one manner in which a cable operator "may fulfill" its customer service obligations, but the ultimate process by which a cable operator achieves

customer satisfaction is really irrelevant: it is the result that matters. Operators whose customers are satisfied should not be required to meet artificial performance criteria.

The FCC's standards should be a flexible national benchmark by which operators may attempt to improve customer satisfaction. The model standards, as annotated below to provide clarifications arising from the industry's experience to date, promote the flexibility of implementation that is necessary.

If applied with the intended flexibility, the NCTA standards provide a workable national benchmark. But there is nothing in the 1992 Cable Act which suggests that the FCC customer service standards govern all cable operators in the absence of local adoption. In communities that are satisfied with customer service, there is no need for mandatory standards to be enforced by the FCC.

There is also no basis in policy or law to permit local franchising authorities to amend customer service terms in existing franchises before renewal. The experience of cable operators to date shows that ordinances adopted or proposed with little or no input from the cable operator tend to impose expenses with no concern for whether they are offset by a demonstrated need or benefit. A customer service agreement negotiated between the franchisor and the franchisee provides the best route to cost-effective customer standards.

To permit a franchising authority to unilaterally impose customer service standards would nullify three other provisions of the Cable Act. First, Section 632 declares that the FCC standards are one method "by which cable operators may fulfill their customer service requirements." Second, Section 632 also requires that a cable operator agree to customer service requirements that exceed FCC standards. And third, the standards governing franchise renewal contained in Section 626 of the Cable Act are designed to entitle a cable operator to a renewal expectancy partially on the basis of whether its past customer service "has been reasonable in light of community needs," and if its proposal for renewal (including customer service) is reasonable to meet future community needs and interests that are justified by cost. Each of these provisions would be undermined if a franchising authority were allowed to impose whatever customer service standards it deemed appropriate at any time. Those portions of Section 8 of the 1992 Cable Act which preserve the right of franchising authorities and States to pass customer service and consumer protection measures simply codify the power to pass laws of general applicability, which incidentally impose customer service or consumer protection standards on cable operators.

Where a cable operator and local franchising authority have agreed to customer service standards in existing franchise agreements, the Commission should grandfather those standards. As part of the renewal process, the national benchmark should be

reviewed and, if appropriate, adopted as part of the franchise renewal process. The majority of cable subscribers will be protected in this way, because the bulk of cable television franchises are either coming up for renewal soon, or have been renewed recently with appropriate customer service requirements.

As with all franchise provisions, however, the cable operator and franchising authority are free to negotiate revisions at any time during the term of the franchise. The flexibility demanded by the specific needs and economics of a wide variety of cable systems requires that franchising authorities be permitted to incorporate customer service standards that are less stringent than those eventually adopted by the FCC.

The FCC should limit the power of local franchising authorities to subject the cable operator to the payment of compensation to situations in which the operator has had a chance to cure the defect in a timely manner. Customer service standards require that the cable operator engage in self-monitoring, and the operator should be encouraged to report failings by allowing the operator a chance to improve. Similarly, franchising authorities should not be permitted to impose any form of punitive damages, which are unrelated to actual loss by subscribers. Such penalties are disfavored by the law, and do not address the best interests of subscribers.

I. CONGRESS INTENDS FLEXIBILITY IN FCC STANDARDS

A. Congress & The FCC Recognized That "Standards" Cannot Be Uniform, And Must Be Flexible

The practical realities of the cable television industry do not permit any strict national customer service standard applicable to all cable systems of all sizes in all locations. In passing the customer service requirements of the 1992 Cable Act, the House Report (from which the statutory requirements were taken) recognized "the difficulty of establishing a uniform set of national standards that can be applied equally to all cable systems, regardless of size, and in all parts of the country, regardless of marketplace characteristics." H.R. Rep. 628, 102d Cong., 2d Sess. at 105 (1992) ("House Report"). The House Report recognized that the NCTA model standards "attempt to address these differences," and concluded that the final "standards should be flexible in nature." House Report at 105.

The Commission, in its NPRM, recognized that in some areas, "even minimal service guidelines may require a level of funding that, with a limited subscriber base, might result in a dramatic increase in rates or a reduction of other services." NPRM at ¶ 18. The NPRM also recognized the need for flexibility in systematic measurement of standards, NPRM ¶ 11 n. 21, installation and service standards, NPRM ¶ 14, and other areas. NPRM ¶¶ 17, 19. The NPRM seeks comment on the proper balance between the imposition of specific customer service requirements (like sufficient staff to meet all new installation or service calls

within the NCTA standards) and the "considerable expense to system operators and eventually to consumers [that] may result." The NCTA standards are explained in detail in NCTA's Comments of January 11.

B. Customer Satisfaction, And Not The Procedures Which Create Satisfaction, Is The Ultimate Standard

The motivating force behind Section 8 is Congress's desire to improve customer service where subscribers are dissatisfied with the current service. The only standard that really reflects the effectiveness of a cable operator's customer service is whether subscribers are satisfied. For this reason, the exact procedures by which a cable operator achieves a high level of satisfaction are irrelevant. It is the result that matters.

The statute dictates that meeting the FCC's standards is to be one way in which an operator "may fulfill" its customer service obligations. Yet many operators achieve a high level of customer satisfaction through a wide variety of service practices that are tailored to the particular needs and economies of widely divergent systems. Operators whose customers are satisfied should not be required to meet artificial performance criteria unrelated to cost-effective increases in customer satisfaction. The FCC's customer service standards should be a flexible national benchmark by which those operators who have a demonstrated need for improved customer service may attempt to improve the bottom line of customer satisfaction.

II. THE NCTA STANDARDS SHOULD BE A NATIONAL BENCHMARK IF THEY ARE APPLIED WITH THE FLEXIBILITY INTENDED BY CONGRESS AND BY THE STANDARDS THEMSELVES

CR&B believes that the NCTA standards can and should be used as a national benchmark, from which the standards for each community desiring improvement may be tailored to meet local needs and to account for the economics of that cable system. CR&B endorses the NCTA standards as a national benchmark if applied with concern for the demonstrated needs of each particular community and the cost of meeting each standard. The NCTA standards are explained in detail in NCTA's comments of January 11, 1993 in this proceeding.

The NCTA standards permit the tailoring of customer service requirements to the needs of each particular community. For example, the requirement of "supplemental hours" for telephone and walk-in service (as clarified by the annotations) applies only when the added service is supported by demonstrable community needs, and is cost-justified. Similarly, the telephone answer time standards contain the caveat that measurement of compliance may not be cost-effective in smaller cable systems. The flexibility of these standards encourages each franchising authority and cable operator to carefully scrutinize each requirement, and to adopt local standards that lead to the most cost-effective level of customer service for the community.

It is obviously possible to formulate standards which are more demanding, but they will also be more costly. There is

a trade off in each criteria. Service calls to remote rural communities sustained by technicians riding a "circuit" cannot always be completed in 36 hours without having additional staff. The cost to rent and staff an office in a modest community is substantial: In a 1992 Missouri commercial impracticability proceeding, for example, the cost of a modest (750 sq. ft.) local business office was established at:

(1) $4,250/mo., including rent, cleaning, trash, water, computer terminals, phone and data lines, power, sewage, supplies, maintenance, employee wages and capital amortization; plus

(2) $20,000 startup capital costs including signs, cable drops, phone lines, computer terminals, office equipment. Amortized: $250/mo.;

for a total of $4,400/mo. Yet such offices can have remarkably low walk-in traffic, and create a significant and needless rate burden in small communities with access to neighboring business offices or toll free lines. A PBX costs from about $50,000 up to $200,000. Although some better PBX devices come with monitoring capability, others require software packages costing from $13,000 to $58,000, and possibly additional hardware which costs $5,000 and up. An ARU/PBX costs from $65,000 to serve a 48,000 subscriber system to between $85,000 and $110,000 to serve a system with 80,000 subscribers.

Similarly, it is extremely costly to provide daytime staffing levels during peak evening viewing hours. It would be particularly unfair to compel such staffing when neither

broadcasters, telephone and electric utilities, nor any other regulated service industry, is required to maintain daytime staffing levels into the night, even though more of their customers are likely to be using residential services in the evening. As one more example, the industry has invested substantially in the record keeping apparatus designed to document compliance with NCTA standards. These records are and should remain open for inspection by franchising authorities. To change them -- even slightly -- can impose major capital equipment costs without corresponding effect on service to the customer. Such costs ultimately will be borne by cable customers, and may be disproportionate to the benefits when spread over a small subscriber base.

The Commission should resist efforts to use major market experiments (like Denver and Los Angeles) as models for the nation. In Los Angeles, for example, the city board of communications has imposed orders on Century Communications that require automatic subscriber credits for outages of one channel, regardless of cause; require one month of credit for any missed service appointment; require 24 hour telephone and technical service; and preclude the use of ARU's in Century's efforts to render prompt telephone service. These standards, which cost Century an estimated $1.5 million per year in additional personnel and related costs alone, would put many cable systems out of business. Just as major market franchises proved uneconomic "blue sky" during

the franchise wars, unrealistic customer service standards today would drive up costs at the very time the Commission is trying to constrain prices and spur efficiencies.

A. If The Community Is Satisfied, There Is No Need For Mandatory Standards To Be Independently Enforced By The FCC

We see no basis in the 1992 Cable Act to conclude that the FCC customer service standards become effective for all cable operators absent local adoption. In fact, the flexibility needed to address local needs precludes federal standards implemented by default. The FCC's primary role after establishing the standards should be to monitor the industry and to adjust the standards if, after adequate time for implementation, the standards appear to be inadequate.

B. Standards May Not Be Unilaterally Imposed Or Exceeded By Franchising Authorities

The NPRM asks whether a franchising authority may impose new customer service requirements on a cable operator during the franchise term. Both policy and the statute, however, strongly prohibit unilateral amendment of customer service terms in existing franchises, and permit the adaptation of new standards only as part of franchise renewal or otherwise by agreement.

1. Policy

The practical concern of cable operators is that unilateral action by franchising authorities tends toward excess, not cost effectiveness. Recent industry experience shows that

ordinances adopted or proposed by franchising authorities, with little or no opportunity for the cable operator to participate, tend to impose costly burdens without regard to the balance between these costs and the demonstrated need for or benefit from the regulations. For example,

- In a widely publicized instance, Birmingham, Alabama in 1986 passed a comprehensive ordinance governing franchise renewal which would have required a state-of-the-art two-way institutional network, several dedicated leased-access channels, payment of a $100,000 application fee, plus almost $1 million of the city's consultant costs (over $14 per subscriber for the cash payments alone), all without consideration of the needs of the community or the ultimate effect of these costs on subscriber rates or the cable system's profitability (see Broadcasting Magazine, May 5, 1989 at 66).

- In 1990, the City of Sacramento, California proposed an ordinance regulating customer service (and nothing else). Even after prolonged discussion with the local operator, as adopted in 1992 the ordinance imposes annual costs of $100,000-$150,000 just to produce required reports to the city. The Sacramento system might be able to pass those costs on to its large subscriber base (approximately 200,000), but the same intensive reporting requirements would clearly threaten the viability of smaller systems.

- In 1992, Brownwood, Texas, enacted a boilerplate ordinance, recommended by its consultant, which imposed significant record keeping, reporting, and customer service obligations, as well as other requirements, all before the City concluded any ascertainment of community needs and determined what cost those requirements would impose on the cable operator and, ultimately, its approximately 9,500 subscribers.

These examples illustrate the trend of local governments to

overreach when adopting unilateral ordinances without considering the ultimate cost of regulations to consumers.

A negotiated agreement as to customer service, carefully thought through by franchisor and franchisee, is the best solution. The cable operator will be in the best position to estimate the cost of meeting a particular service requirement. The franchising authority will be able to compare demonstrated community needs with the impact of those costs on the subscriber base. Together, the operator and franchising authority should be able to determine whether the cost of meeting a certain customer service standard will be detrimental to subscriber rates or other services, to tailor the standards accordingly, and to agree to a future date by which the operator must be able to meet the new standards.

2. Law

The 1992 Cable Act requires the agreement of the cable operator to impose customer service standards which exceed the national benchmark. To allow a franchising authority to unilaterally impose standards would nullify three other provisions of the Cable Act.

First, Section 632 directs the Commission to "establish standards by which cable operators may fulfill their customer service requirements." 47 U.S.C. § 552(b) (1992 amendment) (emphasis added). Operators would be unable to "fulfill" their obligations using the FCC standards if a franchising authority

were free to set goals unilaterally in excess of FCC standards. See, e.g., 2A Norman J. Singer, Sutherland Statutory Construction § 46.06 at 119-126 (Sands 4th ed. 1992)(every word, clause and sentence should be given effect, so that no term is inoperative or superfluous) (and cases there cited).

Second, the statute declares that: "[n]othing in this section shall be construed to prevent a franchising authority and a cable operator from agreeing to customer service requirements that exceed" the FCC standards. 47 U.S.C. § 542(c)(2) (emphasis added). The requirement that parties must agree upon additional standards would be a nullity if the franchising authority had the unabridged discretion to impose standards beyond the FCC's.

Third, and most glaringly, the standards for franchise renewal would be erased as to customer service requirements if the franchising authority were allowed to impose whatever standards it deemed appropriate.[1/] Section 626 of the Cable Act generally entitles an operator to renewal if: (1) it has substantially complied with material franchise terms; (2) its service

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1/ Although the Conference Report to the 1992 Cable Act contains a suggestion that customer service standards might be imposed as part of a franchise modification or transfer, the text of the statute, which allows a cable operator to "fulfill" its obligations using the FCC standards, to "agree" upon more demanding standards, and which ties customer service requirements to renewal, cannot be reconciled with this suggestion. The statutory language and structure must take precedence over such inconsistent legislative history. See, e.g., ACLU v. FCC, 823 F.2d 1554, 1567-69 (D.C. Cir. 1987), cert. denied, 485 U.S. 959 (1988).

(including response to consumer complaints and billing practices) "has been reasonable" in light of community needs; (3) the operator is financially, legally and technically qualified; and (4) "the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests." 47 U.S.C. § 546(c). This standard for renewal is intended to eliminate the "blue sky" franchise requirements of the franchise wars, and to tie franchising obligations to what is needed and cost-justified. See, e.g., H.R. Rep. No. 934, 98th Cong., 2d Sess. at 74 (House Report to 1984 Cable Act) ("[I]n assessing costs under this [renewal] criteria, the operator's ability to earn a fair rate of return on its investment and the impact of such costs on subscriber rates are important considerations."). The customer service provisions of the 1992 Cable Act must be construed in harmony with these statutory renewal procedures and standards. See, e.g., 2A Singer, Sutherland Statutory Construction § 46.05 ("[E]ach part or section of a statute should be construed in connection with every other part or section so as to produce a harmonious whole").

In practice, as part of the renewal process, the franchising authority and cable operator each review the operator's customer service during the expiring franchise term, ascertain community needs for the future, and negotiate a franchise that usually incorporates those requirements that will not create

undue pressure on subscriber rates or services. If franchising authorities are free to impose a "wish list" of customer service standards before renewal, then the prophylactic effect of the Cable Act renewal standards will be lost. Subscriber rates would be exposed to unwarranted cost pressure, and "the operator's ability to earn a fair rate of return on its investment" would be undermined by the unrestricted discretion of the franchising authority. Congress could not have intended this result by enacting the customer service provisions. Absent explicit statutory language removing customer service requirements from renewal proceedings, a franchising authority should not be permitted to alter a franchise agreement unilaterally before renewal.[2/]

3. Laws of General Applicability

Those passages of Section 8 which preserve the right of franchising authorities and states to pass customer service and consumer protection measures simply affirm the power to pass laws

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2/ New York Cable Television Ass'n, Inc. v. Finneran, 954 F.2d 91 (2d Cir. 1992), which some read to the contrary, is in conflict with Housatonic Cable Vision Co. v. Department of Public Utility Control, 622 F. Supp. 798, 809 (D. Conn. 1985) (court noted that "the Cable Act establishes procedural standards that limit the ability of a franchising authority to establish or alter the terms of its agreement with a cable operator"), and with limits in the 1984 Act on unilateral amendments. E.g. H.R. Rep. No. 934, 98th Cong. 2d Sess. at 94 (1984) ("For example, [if] after the effective date of this Act, a state enacts a statute requiring a new PEG channel, that provision may only be phased in as each franchise comes up for renewal."). In any event, Finneran is inconsistent with a fair reading of the 1992 amendments to the Cable Act.

of general applicability. The final sentence of sub-section 8(c)(2) declares that:

> Nothing in this title shall be construed to prevent the establishment or enforcement of any municipal law or regulation, or any State law, concerning customer service that imposes customer service requirements that exceed the standards set by the Commission under this section, or that addresses matters not addressed by the standards set by the Commission under this section.

Subsection 8(c)(1) similarly permits state and local franchising authorities to pass consumer protection laws. Unless read in the context of the rest of Section 8, these provisions would contradict those earlier provisions of the section which allow a cable operator (1) to "fulfill" its customer service obligations under the federal standards, and (2) to agree to more stringent requirements, and would likewise render null the standards for renewal that tie customer service to cost-justified community needs and interests. In light of these co-equal statutory provisions, sub-section 8(c)(1) and the final sentence of subsection 8(c)(2) must be read to permit state and local laws of general applicability (like trade regulation) to establish customer service requirements for <u>all</u> businesses, including cable, in a nondiscriminatory manner.

C. Consensual Franchise Provisions Are Grandfathered Until Renewal

This same rationale requires the Commission to conclude that consensual customer service standards contained in existing franchises are grandfathered.[3/] If a franchising authority is allowed to superimpose new customer service obligations unilaterally outside of the renewal process, there is no mechanism that will either protect the investment of cable operators or prevent unjustified rate pressure on subscribers. The statutory renewal standards require the franchising authority to view customer service as part of the overall community needs and interests that are cost-effective, not as an independent regulatory matter.

The NPRM expresses a concern that Congress' goal of timeliness in customer service might be hindered unless franchising authorities may amend the franchise agreement before renewal. NPRM ¶ 7 n. 11. This concern is without foundation: the bulk of cable television franchises issued in the mid-1970s through the early 1980s are coming up for renewal in the next few

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3/ The Contract Clause of Article I, Section 10 of the United States Constitution prohibits any state "law impairing the obligation of contracts," and would constitutionally prohibit a local government from unilaterally imposing new customer service requirements on a franchised cable operator. See, e.g., 5 E. McQuillen, The Law of Municipal Corporations § 19.44 at 652-53 (3d ed. 1989) (general rule is that a city or county that enters a contract may not, "by ordinance or otherwise, impose additional burdens on the grantee or vary the conditions contained in the contract."); Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-13 (1983); Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244-47 (1978); United States Trust Co. v. New Jersey, 431 U.S. 1, 17-23 (1977).

years. Most franchises (covering the vast majority of subscribers) were awarded during the "franchise wars," and were set for 15 year periods now expiring. See, e.g., Cities Get More Assertive On Franchise Renewals, MultiChannel News, Jan. 13, 1992 (p.3, 34) ("More franchises than ever are entering the 36-month Cable Act renewal window, including large urban and suburban franchises negotiated in the late 1970's and early 1980's"); Cable Franchise Wars, Cable World, Jan. 7, 1991 (P.1, 32) ("Most of the country's cities granted cable franchises in the '70s and early '80s, many as 15-year contracts dictated by a Federal Communications Commission rule in effect from 1972-1977 that limited franchise terms to that timespan."). As these franchise renewals come up for negotiation, the cable operator and the local franchising authority will carefully review each area of customer service and arrive at a set of standards that meet the community needs.

Recently renewed franchises also pose no threat to Congress' desire for increased customer satisfaction. Franchises that have been renewed in the past five years most likely include customer service standards tailored to that community. For example, renewal franchises granted from 1989 through 1992 to systems owned by Western Communications in Camarillo, Fillmore, Moorpark and Westlake Village, California all incorporate customer service standards in such areas as telephone and office availability, service for installations, interruptions and repairs, billing,

record keeping and reporting, and subscriber notifications. A 1992 renewal franchise granted to TeleCable's system in Lexington-Fayette County, Kentucky incorporated customer service standards that track areas specified in the NCTA model. These communities and others, which have recently analyzed the customer service needs of their communities and incorporated appropriate standards in renewal franchises, should not have to revisit the issue as a result of the 1992 Cable Act. Communities and cable operators would, of course, be permitted to modify existing franchise terms through mutual agreement to account for the new federal customer service standards.

D. A Franchising Authority May Agree With The Operator To Incorporate Customer Service Requirements Less Stringent Than FCC Standards

The FCC standards may be adopted, as modified to meet community needs, into new and renewal franchises. In order to accommodate the various different needs of a specific community, however, the franchising authority and operator must be allowed to adopt standards less stringent than those set by the FCC. If a local government and cable operator agree, for example, that customers have been satisfied with the operator's existing service, they should be free to incorporate that level of service into the franchise if they so desire. When subscribers are satisfied with a level of service below a national benchmark, it would undermine the goals of Congress in passing this provision if subscribers were forced to pay for additional customer service resources needed to meet a federal standard.

For example, Grassroots Cable Systems serves approximately 6,000 subscribers in 20 different isolated rural cable systems in Maine and New Hampshire. The company's service technicians schedule one day each week to perform installation and service calls in a particular system, covering a set "circuit" of systems each week. These rural subscribers do not complain when told that they must await the next scheduled day for service in their system, and instead give the company good marks for customer service. Grassroots' subscribers understand that it would be impossible for a cable operator to staff each small rural system with more permanent technicians to insure service within 36 hours or some similar period. If the subscribers are satisfied, there is no need for Grassroots to attempt to meet more stringent service standards that might require greater costs than the operator can reasonably be expected to recover.

E. The FCC Should Prevent Excessive Enforcement Action

1. Right of Cure

Before any cable operator is subject to pay compensation for violations of the customer service standards, the operator must have an initial chance to implement the standards, as well as an opportunity to cure perceived defects. The NCTA standards require frequent monitoring of compliance with the quantitative standards by the cable operator, just as the FCC's CLI rules require periodic testing. Just as the CLI rules permit an operator to correct deficiencies without penalty, so too should

the FCC's customer service standards grant cable operators an incentive to monitor themselves and correct irregularities.

2. No Punitive Remedies

If the cities are to enforce the customer service standards, however, the type of enforcement permissible should be the power to ensure that the standards are implemented, and the power to compensate subscribers for a cable operator's failure to meet the local standards. The franchising authority should not be permitted to impose penalties upon the cable operator through levies unrelated to actual loss by subscribers. Just as provisions for unreasonably large liquidated damages in contracts are void as penalties disfavored by the law, see, e.g., UCC Art. II § 2-718; Restatement (Second) Contracts § 356(1) (1981), a cable operator should not be subject to an unreasonable penalty for failure to meet customer service standards.

Even a modest liquidated damages provision can operate as a penalty if the violation applies to all subscribers (e.g. system outage) and/or so-called "continuing violations". For example, in recent litigation under the privacy provision of the Cable Act, 47 U.S.C. § 551, a class action on behalf of the 198,000 subscribers to the Kansas City system sought liquidated damages alternatively for $198 million ($1,000 per violation x 198,000) or more than $26.7 billion ($100 per day for an alleged violation continuing for 1,352 days, times 198,000). See Wilson v. American Cablevision of Kansas City, Inc., No.

88-1259-CV-W-JWO-3 (W.D Mo., May 29, 1990) at n. 11. Rigid liquidated damages provisions which presume injury for minor violations clearly are not geared toward the best interests of subscribers, and could threaten the viability of both large and small systems.

F. **Small System Exemption**

The NCTA's present standards recognize that systematic measurement of customer service should not be expected in certain systems with fewer than 10,000 subscribers. CR&B does not believe that it is possible to frame blanket exemptions from all service obligations for systems below a certain size. The variations in existing system design, subscriber demographics, and subscriber density create variations too numerous to exempt or not exempt a system from a particular standard on the basis of size alone. However, the standards themselves must be applied with sensitivity to the cost burdens involved. The Commission should state that smaller systems may be less able to comply with all of the standards, and should urge franchising authorities to take into account the size of systems when developing and applying customer service standards.

III. CONCLUSION

CR&B believes that the NCTA customer service standards, as interpreted by NCTA, provide a workable model for a national benchmark of customer service standards that incorporates the flexibility necessary to allow each community to tailor the

standards to local needs and cost justification. CR&B recommends that the FCC adopt the annotated NCTA standards as the national benchmark by which a cable operator may fulfill its customer service requirements.

Respectfully submitted,

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